

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JEREMY STANFIELD,

Plaintiff,

v.

TAWKIFY, INC.,

Defendant.

No. C 20-7000 WHA

**ORDER GRANTING
ATTORNEY'S FEES
AND COSTS**

This order follows full briefing and a telephonic hearing on defendant's motion for attorney's fees and costs.

The Dating Services Contract Act, California Civil Code Section 1694.4, subdivision (c), provides:

Any buyer injured by a violation of this chapter may bring an action for the recovery of damages in a court of competent jurisdiction. Judgment may be entered for three times the amount at which the actual damages are assessed. Reasonable attorney fees *may* be awarded to the prevailing party.

(emphasis added). Section 1694.4 grants discretion to courts to determine the extent to which attorney's fees should be awarded to the prevailing party. *See Jankey v. Lee*, 55 Cal. 4th 1038, 1046 (2012). The definition of "prevailing party" in California Civil Code Section 1032(a)(4) includes "a defendant in whose favor a dismissal is entered." Thus, the prior dismissal on the merits renders defendant the prevailing party under Section 1032(a)(4).

Defendant now seeks to recover \$684,232 in attorney's fees (for 1,474.1 hours of attorney work and 205 hours of paralegal work) as well as \$20,367.21 in costs (Dkt. 121 at 3; Dkt. 121-1 at 1–2, Graham Supp. Decl. ¶ 5, Exh. 4).

This order finds that plaintiff should pay a modest amount of the requested attorney's fees to defendant. The DSCA serves to encourage consumers to enforce their statutory right to certain disclosures against dating services that do not comply with the Act. For the most part, plaintiff was not such a consumer. He received more back by way of refund than he deserved. He was therefore overcompensated (Dkt. 114 at 1). Plaintiff should be required to pay for a portion of the fees that defendant incurred in defending against this mostly meritless lawsuit.

"[A] court assessing attorney fees begins with a touchstone or lodestar figure, based on . . . 'the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case.'" *Ketchum v. Moses*, 24 Cal. 4th 1122, 1131–32 (2001) (quoting *Serrano v. Priest*, 20 Cal. 3d 25, 48 (1977)). The lodestar may be adjusted based on factors including "(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, [and] (4) the contingent nature of the fee award." *Id.* at 1132.

After considering these factors in light of a review of defense counsel's invoices, timekeeping records, and experience, this order finds reasonable a \$375 blended hourly rate. A reasonable number of hours expended in this lawsuit is at least 600 hours (excluding hours of work that did not result in the dismissal). This would result in a lodestar amount of at least \$225,000 in fees.

"To the extent a trial court is concerned that a particular award is excessive, it has broad discretion to adjust the fee downward or deny an unreasonable fee altogether." *Ketchum*, 24 Cal. 4th at 1138. Defendant's request for at least \$684,232 in attorney's fees represents a clear overreach (Dkt. 118-1, Graham Decl. ¶¶ 16–17). This order finds appropriate a substantial reduction rather than outright denial. It is true that this lawsuit lacked merit, but several facts indicate that the fee request is inflated far beyond reason and should be reduced.

1 *First*, defendant did not litigate the case efficiently. The requested fees account for over
 2 1,474 attorney hours litigating only a few claims, all of which revolved around defendant's
 3 alleged violation of the DSCA (Dkt. 121-1, Graham Supp. Decl. ¶ 5). Although plaintiff
 4 brought a putative class action, this matter did not reach a stage where class action discovery or
 5 motion practice was necessary. Plaintiff's counsel submitted declarations showing that
 6 defendant's fee request accounts for more than four times the hours spent by plaintiff's counsel
 7 on this lawsuit (Dkt. 120-1, Schreiber Decl. ¶ 8; Dkt. 120-10, Conn Decl. ¶ 6). Defending this
 8 lawsuit should not have been far more difficult than prosecuting it.

9 *Second*, defendant requested compensation for fees that are not recoverable because they
 10 cannot be attributed to defendant's success in this litigation. For instance, defendant sought
 11 fees in connection with its failed attempt to enforce its invalid arbitration provision, its
 12 unsuccessful motion to stay, and an appeal that it later abandoned (*see, e.g.*, Dkt. 121-1 at 33–
 13 41, 49–54, 59; Dkt. 118-1 at 77–89, 99, 103, 108–110, 113). Defendant would unreasonably
 14 foist these expenses on plaintiff.

15 *Third*, an award of attorney's fees to a defendant "should not subject the plaintiff to
 16 financial ruin." *Garcia v. Santana*, 174 Cal. App. 4th 464, 475 (2009). Plaintiff submits a
 17 declaration in support of the opposition to attorney's fees, which attests to his limited means to
 18 pay the requested award (Dkt. 120-13, Stanfield Decl. ¶ 6). Portions of plaintiff's declarations
 19 filed under seal lay out plaintiff's financial wherewithal (including his net assets) to establish
 20 his alleged inability to pay the requested fee amount (Dkt. 119-4, Stanfield Decl. ¶¶ 7–15).
 21 But plaintiff is not indigent (*ibid.*). His monthly income and his ability to spend \$3,700.00 on
 22 a matchmaking service support the conclusion that plaintiff has the means to pay a portion of
 23 the requested attorney's fees (*id.* ¶¶ 8, 11). The complaint itself cites to Section 1694.4(c),
 24 which is the subsection of the DSCA that contains the fee-shifting provision (Dkt. 26, First
 25 Amd. Compl. ¶ 56). Thus, plaintiff was or should have been aware that he may be on the hook
 26 for defense counsel's fees if defendant were to prevail.

1 Nevertheless, as an individual consumer, plaintiff would be unjustly and
2 disproportionately burdened by having to bear more than a modest sum in attorney's fees. The
3 Court is convinced that there is fluff and overbilling and items that do not deserve to be
4 compensated. But after making a downward adjustment, the resulting fees would still be at
5 least \$225,000. The Court is unwilling to impose that burden on plaintiff and wants to be clear
6 about the true reason. The statute gives courts discretion in the award of attorney's fees under
7 the DSCA. This order's exercise of discretion takes into account plaintiff's ability to respond
8 to the award. The Court believes the award should not be so great that it deters other consumer
9 plaintiffs who wish to exercise their rights under the DSCA but fear that they will be
10 financially ruined by an attorney's fee award if they do not prevail.

11 Considering the reasonable hourly rate, the number of hours reasonable for securing
12 success in this lawsuit, the downward multiplier for the inclusion of unreasonable requests, and
13 plaintiff's financial position in comparison to that of defendant, this order finds that reasonable
14 compensation for defense counsel's work is **\$50,000 IN FEES**.

15 Contrary to plaintiff's assertion in his objection (Dkt. 124 at 1), defendant complied with
16 Local Rule 54-1 because the substance of its bill of costs — appended to its motion for
17 attorney's fees — was filed within fourteen days of entry of judgment (Dkt. 118). Neither our
18 Local Rules, the FRCPs, nor the United States Code require that a defendant submit the bill of
19 costs form provided by the Northern District of California (Form 133 on the court website) to
20 preserve its ability to request costs. Defendant timely filed the motion for attorney's fees
21 containing the substance of the requested costs, including a declaration as to costs and
22 appended invoices. Plaintiff points out that the parties met and conferred after the filing of the
23 motion for fees but before plaintiff filed its opposition. After conferring with plaintiff,
24 defendant agreed to reduce the amount of costs as reflected in the bill of costs form appended
25 to the reply. Defendant's willingness to negotiate the fee request downward does not waive its
26 right to seek costs based on the filing deadline. Our Local Rules encourage such meet and
27 confers before a party objects to its opponent's fee request. *See* LR 54-2(b).
28

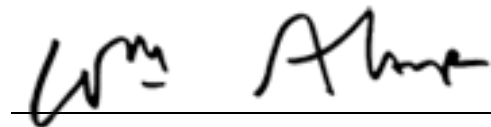
1 However, a review of the requested costs shows that certain costs were improperly
 2 sought and must be excluded. The cost of expedited materials are not recoverable. *See, e.g.,*
 3 *Apple Inc. v. Samsung Elecs. Co.*, No. 11-CV-01846-LHK, 2014 WL 4745933, at *7 (N.D.
 4 Cal. Sept. 19, 2014). Likewise, fees for filing are allowed, but nothing in our Local Rules,
 5 FRCP 54, or 28 United States Code Section 1920 suggests that the cost of *rush* filing is
 6 taxable. Further, Local Rule 54-3(c)(5) states that a reporter's attendance fee is taxable when a
 7 deposition witness fails to appear "if the claimant made use of available process to compel the
 8 attendance of the witness."

9 The above principles warrant excluding from the cost award three entries in the bill of
 10 costs. *First*, the cost award must exclude the \$562.00 charge dated October 11, 2021 (which
 11 was lumped into the \$1,031.45 amount under "Fees of The Clerk and For Service of Process"
 12 but comes from invoice No. 10348895) for an entry labeled "E-filing Rush" (Dkt. 121-1 at 36).
 13 *Second*, the cost award must exclude the invoice charge of \$441.65 dated January 27, 2021 for
 14 an "expedited transcript" (*id.* at 58). *Third*, the cost award must exclude the \$99.00 charge
 15 dated June 4, 2021 for "reporter attendance fees" because the declarations in support of
 16 defendant's motion and reply do not suggest that defendant made use of available process to
 17 compel attendance of its missing witness (*id.* at 161). These deductions reduce the cost award
 18 to **\$19,264.56**.

19 Plaintiff shall pay **\$50,000.00 IN FEES AND \$19,264.56 IN COSTS** for a **TOTAL OF**
 20 **\$69,264.56**. Plaintiff shall pay the award in installments of **\$500 PER MONTH** until the award is
 21 paid off, but there will be no interest on the unpaid award.

22
 23 **IT IS SO ORDERED.**

24
 25 Dated: December 3, 2021.

26 
 27 WILLIAM ALSUP
 28 UNITED STATES DISTRICT JUDGE